

A. N. HENDERSON

IBLA 75-380

Decided April 4, 1977

Appeal from decisions of Nevada State Office, Bureau of Land Management, rejecting appellant's over! the! counter oil and gas lease offers N-11043 and N-11044, for acquired lands.

Set aside and remanded.

1. Mineral Lands: Mineral Reservation! ! Oil and Gas Leases: Acquired Lands Leases! ! Public Records! ! State Laws! ! Title: Real Property

Where material involving a prior mineral reservation on acquired lands is first submitted on appeal, and the effect of a state statute and state court decree is in issue, it is appropriate to remand the case to the BLM State Office for further consideration.

APPEARANCES: Allen N. Henderson, Esq., Salt Lake City, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal arises from decisions of February 12, 1975, by the Nevada State Office, Bureau of Land Management, rejecting appellant's two over! the! counter oil and gas lease offers, N-11043 and N-11044, for acquired lands. 30 U.S.C. § 221 et seq. (1970); 43 CFR Subpart 3111.

The lands in issue were originally granted to the State of Nevada by the United States. By a number of patents conveying separate lands, the State of Nevada passed title to two unassociated individuals, Robert C. Hendricks and Jason J. Deming, between 1902 and 1921. These patents were issued with the provision that "all mines of gold, silver, copper, lead, cinnabar, and other valuable minerals which may exist in said tract \* \* \* are hereby expressly

reserved." On August 6, 1945, the lands were conveyed back to the United States by Lafayette and LaRue Carter, husband and wife, with a correction deed to the same effect being issued on March 30, 1946. The Carters warranted their title and made no reservation of minerals.

The basis of the State Office rejections was that the "lands were reconveyed to the United States, but all Mineral Rights were retained by a previous owner." In a letter of September 3, 1975, to the appellant, the State Office explained that the "basis for this contention is that the patents from the State of Nevada to Jason J. Deming and Robert C. Hendricks have a reservation of gold, silver, copper, lead, cinnabar and other valuable materials that may exist in said tracts."

Appellant contends that the rejections were based upon erroneous interpretation of the laws of the United States and of the State of Nevada, and insists that the mineral rights in question are vested in the United States as a subsequent transferee from Nevada. Specifically, appellant asserts that in 1921, Nevada, by statute, conveyed to all patentees and their successors, subject to 5 percent royalty, those mineral rights which were originally reserved in favor of the State at the time that the lands were patented. Thus, appellant urges that the mineral rights were held by the Carters when they conveyed the lands to the United States in 1945.

[1] Appellant bases his assertions on matters submitted for the first time on appeal. First, he submits a copy of a January 31, 1962 opinion, with attached exhibits, by the Attorney General of Nevada on the effect of the 1921 Nevada statute. Second, he tenders a document entitled "Continuation Abstract of Title," in which there is included an August 25, 1945, Nye County, Nevada, District Court decree establishing the Carters as holders of fee simple absolute title to a tract which appears! ! the photocopy submitted is somewhat indistinct! ! to encompass the lands in issue. Under United States v. Rink, A-25820 (May 18, 1950), and in view of the material submitted on appeal, it is appropriate to remand the cases to the State Office for consideration of the new matters and such other aspects of Federal and Nevada law as deemed proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decisions appealed from are set aside and the cases are remanded to the State Office for further consideration.

Joseph W. Goss  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joan B. Thompson  
Administrative Judge

